

Small Business

Regulatory Review Board

Rules of Procedure

Adopted: February 22, 2005
Revised: May 19, 2005

I. Definitions

A. In the Small Business Regulatory Review Board's Rules of Procedure:

1. "Act" means the Small Business Regulatory Fairness Act adopted in 1983 Wisconsin Act 90.
2. "Agency" means a state regulatory government entity that has been granted rule-writing authority."
3. "Board" means the Small Business Regulatory Review Board.
4. "Chair" means the Chairperson appointed by the Governor's Office.
5. "Electronic Submission" means a document submitted by e-mail or via the web site.
6. "Open Meeting" means a meeting which is held in a place reasonably accessible to members of the public and open to all citizens at all times, Wis. Stats. 19.83.
7. "Open Meeting Law" means the governing law of open meeting of governmental bodies as provided in Wis. Stats. 19.81.
8. "Public Notice" means providing a public notice of an open meeting as provided in Wis. Stats., 19.84.
9. "Proposed Rule" means all or any part of an Agency's proposal to promulgate a new rule or revision to an existing rule. Rule means a regulation, standard, statement of policy or general order of general application which has the effect of law and which is issued by an agency to implement, interpret or make specific legislation enforced or administered by the agency or to govern the organization or procedure of the agency as contained in 227.01(13).
10. "Emergency Rule" is a rule which an agency may promulgate without complying with the notice, hearing and publication requirements under Chapter 227 if preservation of the public peace, health, safety or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures
11. "Guideline" means a document providing direction on a statutory requirement.
12. "Ombudsman" means the Department of Commerce's Small Business Ombudsman who is the designated staff member providing technical and support services to the Board. Wis. Stats., 227.114(5) directs an agency to

provide notification to the Ombudsman when promulgating a rule that will have an effect on small business.

13. "Scope Statement" means the first document indicating the intention of the agency to draft a rule and includes requirements contained in 227.135(1).

14. "Small Business" means a business entity with 25 or fewer employees or yearly revenue of \$5 million or less as defined in 2004 Wisconsin Act 145.

II. Meetings

- A. The Chair, in consultation with the Board, shall set regular meeting dates of the Board for each calendar year and shall post notice of each regular meeting according to the Open Meeting Law.
- B. The Ombudsman shall post the public meeting notice according to the Open Meeting Law.
- C. The Board may schedule a special meeting to consider any matter it may consider at a regular meeting. The Board shall post notice of a special meeting according to the Open Meeting Law at least 48 hours before the special meeting.
- D. The Board may recess a regular or special meeting to a later date if, before recessing, the Chair gives notice of the date and time of the resumption of the meeting and posts a notice of resumption of the meeting according to the Open Meeting Law.
- E. A quorum of the board shall consist of nine board member without regard to board member's representation.
- F. The Ombudsman will provide to each Board member the meeting agenda and other information related to the meeting. Such information may include, among other things:
 - 1. Briefings on Proposed rules and Emergency rules that an Agency has certified to have a significant economic impact on a substantial number of small businesses.
 - 2. Briefings on Scope Statements that may have a significant economic impact on a substantial number of small businesses.
 - 3. Briefings on Proposed rules and Emergency rules that Agencies have not certified having a Small Business. The following may be contained in the briefings:
 - a) Comments received from the regulated business community.

- b) Statistical data pertaining to the question of whether the Agency did or did not properly certify the Small Business impact.
- 4. Background information regarding public appearances by small business(es), speakers or the general public.

III. Placing a Proposed Rule on the Board's Agenda

- A. The Agency shall submit a Proposed Rule having a significant economic impact on a substantial number of small businesses to the Board on the same day of submittal to the Joint Legislative Council staff.
- B. All Proposed Rules described in Section III, A, shall be submitted to the Department of Commerce's Small Business Ombudsman, addressed to the attention of the Board, 201 West Washington Avenue, 5th Floor, Madison, WI 53707. An electronic submission shall be sent to the ombudsman@commerce.state.wi.us. Both the paper and electronic submissions shall contain the items listed in Section III, C1 through C4 below.
- C. The Agency shall ensure that each Proposed Rule submitted to the Board contains the following items:
 - 1. A Transmittal to the Board signed by the Agency Secretary that includes:
 - a) The date of submittal to the Board.
 - b) Subject of Rule
 - c) Statutory Authority (including a citation to the statute expressly authorizing any new or increased fee).
 - d) Whether definitions of terms, acronyms or forms used in the Proposed Rule are included in the package and, if not, where they can be found.
 - e) A certification that discloses a reference to any study relevant to the Proposed Rule that the Agency reviewed and either did or did not rely on in the Agency's evaluation or justification for the Proposed Rule as it relates to Small Business.

(The Transmittal to Small Business Regulatory Review Board form - Document #1 - contained in the Appendix.)

- 2. A plain language analysis as required in Wis. Stats. 227.14 (2) and has complied with 227.14 (2m).
- 3. States compliance with considerations for small business as required in 227.114 (2) and (3).

4. The Agency shall submit to the Board an explanation that details the means of public outreach used by the Agency to encourage Small Businesses participation in the rule-making process. This may include, but not be limited to the following:
 - a) The inclusion in the hearing notice of a statement that the Proposed Rule may have an impact on Small Business.
 - b) Direct notification of any Small Business that may be affected by the Proposed Rule.
 - c) Conduct of public hearings concerning the impact on Small Business.
 - d) The use of special hearing procedures aimed at reducing the cost or complexity of participation in the rule-making process by Small Business.
 5. Any written comments received by the Agency concerning the Proposed Rule.
- D. Proposed rules received from Agency shall be placed on the Board's agenda by majority vote of the Board or the Board's authorized subcommittee.
 - E. After a Proposed Rule is placed on the Board's agenda, the Ombudsman shall notify the Agency's Secretary, Executive Assistant and Small Business Regulatory Coordinator of the meeting date for the Board's review of the Proposed Rule.
 - F. After a Proposed Rule is placed on the Board's agenda, the Agency may have the Proposed Rule reviewed at a later Board meeting by requesting the change in a letter sent to the Small Business Regulatory Review Board. The Ombudsman shall notify the Chair of this action.
 - G. Agencies shall notify the Board of their intentions to discontinue with rule promulgation. Agencies shall notify the Board of significant changes made to the rule or analysis that may have been a result of comments they received from Legislative Council.

IV. Filing of a Reviewed Proposed Rule by the Board

- A. When the Board or Board authorized subcommittee by majority vote determines that the Proposed Rule meets the requirements specified in Section III, C1 - C4, it shall provide the Agency notification of this approval by providing a report to the Agency Secretary no later than seven working days after rule review.

B. When the Board or Board authorized subcommittee by majority vote determines that the new Proposed Rule does not meet the requirements specified in Section III, C1 - C4, it shall provide a report to the Agency Secretary no later than seven working days after rule review. The following may be included in the report from the Board to the Agency:

1. Reference to statutory requirements and demand that the Agency comply as required by law.
2. Request for the provision or provisions explaining how the Agency will enforce the rule as statutorily required in 227.14(2g).
3. Request that the Agency reduce language in the Proposed Rule that conflicts, overlaps or duplicates other rules or federal regulations.
4. Request that the Agency provide fee information and fee schedules as part of the analysis; including why fees are necessary and for what purposes the fees will be used.
5. Request that the Agency verify the accuracy, integrity, objectivity and consistency of the data that is used in the analysis.

(The Board's rule review evaluation instrument and template of report to the agency contained in the Appendix - Document #3.)

C. The Board will request that the Agency resubmit the rule to the Board.

V. Placing an Emergency Rule on the Board's Agenda

- A. If an Agency concludes that an Emergency Rule may have a significant economic impact on a substantial number of small businesses the Agency shall submit the Emergency Rule to the Board on the same day that an Agency files an Emergency Rule with the Revisor of Statutes.
- B. Emergency Rule described in Section V, A, shall be submitted to the Department of Commerce's Small Business Ombudsman, addressed to the attention of the Board, 201 West Washington Avenue, 5th Floor, Madison, WI 53707. In addition, an electronic submission shall be sent to the ombudsman@commerce.state.wi.us. Both the paper and electronic submissions shall contain the items listed in Section V, C1 - C5.
- C. The Agency shall ensure that each emergency rule package contains the following items when submitting the rule to the Board:

1. A Transmittal to the Board signed by the Agency Secretary that includes:
 - a) The date of submittal to the Board.
 - b) Subject of Rule
 - c) Statutory Authority (that shall include citation to the statute expressly authorizing any new or increased fee).
 - d) Whether definitions of terms, acronyms or forms used in the Emergency Rule is included in the package and, if not, where they can be found.
 - e) A certification that discloses a reference to any study relevant to the Emergency Rule that the Agency reviewed and either did or did not rely on in the Agency's evaluation or justification for the Emergency Rules as it relates to Small Business.

(Copy of the form Transmittal to Small Business Regulatory Review Board contained in the Appendix - Document #2.)

2. An Agency shall submit to the Board what methods the Agency considered for reducing the impact of the Emergency Rule on Small Business including:
 - a) The establishment of less stringent compliance or reporting requirements for Small Businesses.
 - b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for Small Businesses.
 - c) The consolidation or simplification of compliance or reporting requirements for Small Businesses.
 - d) The establishment of performance standards for Small Businesses to replace design or operational standards required in the rule.
 - e) The exemption of Small Businesses from any or all requirements of the rule.
3. An Agency shall include a statement of the factual, policy and legal reasons for rejecting the small business considerations contained in Sec. V. C2 or alternatives to reducing the burden to Small Businesses contained within the Emergency Rule.

4. An Agency shall include a statement ensuring the accuracy, integrity, objectivity and consistency of the data that is used in the rule analysis.
 5. An Agency shall disclose a reference to any study relevant to the rule that the Agency reviewed and either did or did not rely on in the Agency's evaluation or justification for the rule.
- D. The Ombudsman shall place on the Board's agenda any Emergency Rule certified to have a small business impact and which the Board or a Board's authorized subcommittee by majority vote wishes to review.
 - E. After an Emergency Rule is placed on the Board agenda, the Ombudsman shall notify the Agency's Secretary, Agency Executive Assistant and the Small Business Regulatory Coordinator of the meeting date on which the Board will review the Emergency Rule.

VI. Filing of Reviewed Emergency Rules By the Board or Board Authorized Subcommittee

- A. When the Board or a Board authorized subcommittee by majority vote determines that the Emergency Rule meets the requirements specified in Section V, C1 - C5, it shall provide notification of this approval to the Agency Secretary no later than seven working day after the review of the rule.
- B. When the Board or a Board authorized subcommittee by majority vote determines that the Emergency Rule does not meet the requirements specified in Section V, C1 - C5, it shall provide a report to the Agency Secretary no later than seven working days after the review of the rule. The following determinations may be included in the report:
 1. Reference to the statutory requirements and demand that the Agency comply as required by law.
 2. Suggest changes in the Emergency Rule and request that the Agency do any of the following:
 - a) Explain how the Agency has responded to comments received from Small Businesses regarding the Emergency rule.
 - b) Verify that the Emergency rule does not conflict with, overlap or duplicate the other rules or federal regulations.
- C. The Board will request that the Agency comply with Wis. Stats 227.114(2) and (3) and 227.14 (2m) in their report.

(Copy of the Board's rule review evaluation instrument and template of report to the agency contained in the Appendix - Document #4.)

VII. Response to Board or Board's Authorized Subcommittee's Report from Agency

- A. An agency may submit a response to the Board's or Board's authorized subcommittee Report on a Proposed Rule or Emergency Rule by submitting a paper copy to the Department of Commerce's Small Business Ombudsman, addressed to the attention of the Board, 201 West Washington Avenue, 5th Floor, Madison, WI 53707. In addition, an electronic submission may be sent to the ombudsman@commerce.state.wi.us. The response may include:
1. Identification of rule changes made in response to the report.
 2. Explanation of how the rule changes meet the statutory requirements and takes into consideration the recommendations of the Board or Board's authorized subcommittee.
- B. An Agency that disputes the recommendations of the Board or Board's authorized subcommittee may have the opportunity to appear before the Board. The Board or Board's authorized subcommittee will determine whether this appearance will be at the next regularly scheduled Board meeting or a special meeting and will inform the Agency accordingly.
- C. The Board or the Board's authorized subcommittee shall by majority vote submit a report to Legislative Council on any rule that does not comply with statutory requirements.
- D. The Agency's Secretary, Executive Assistant and Small Business Regulatory Coordinator will receive a copy of the Board's report.

VIII. Board Action on Rules Received from the Ombudsman

- A. The Ombudsman shall notify the Board of any rule that may not have been properly certified by the regulating agency within seven days of the publication date in the Administrative Register.
- B. Based upon the majority vote by Board, the Board may request the Ombudsman to obtain information from the rule-writing agency that supports the agency's certification that the rule does not have a significant economic impact on a substantial number of small businesses.
- C. Based upon the majority vote by Board, the Board may request the Ombudsman to obtain information from affected businesses/ associations that would be used by the

Board in determining whether the rule has a significant economic impact on a substantial number of small businesses.

- D. The Board shall by majority vote send to the Agency Secretary a report that covers the concerns the Board has regarding the agency's certification on the rule's impact on small business.
- E. The Ombudsman shall provide a copy of the Board's report to Legislative Council.

IX. Oral and Written Comments Received From Small Business

- A. Any person may submit written comments to the Board about an Agency's existing or proposed administrative rule or guideline. Comments may be submitted to the Board through mail service (Department of Commerce, Attn: Small Business Ombudsman, PO Box 7970, Madison, WI 53707) or through electronic e-mail (**ombudsman@commerce.state.wi.us**) or through the Small Business Regulatory Review Board web site at **<http://commerce.wi.gov/BD/BD-SBRRB.html>**. The public will be informed by the Board of the hearing process and the submission of comments that are to be made directly to the agency on any proposed administrative rule that is currently being promulgated. Comments made to the Board on a proposed rule will be provided to the agency and made a part of the agency's public hearing comments.
- B. All persons attending a Small Business Regulatory Review Board meeting will be requested to complete the Sign-in Sheet. Persons wishing to provide public comment shall circle "yes" on the Sign-In Sheet.
- C. A copy of the SBRRB Public Participation Protocol will be made available at the meeting.
- D. Comments received from small businesses regarding a rule that is on the Board's agenda will be heard prior to any Board or Board authorized subcommittee action on the rule. If comments are received by the Board on a proposed rule, those comments will be provided to the agency and made a part of the agency's public hearing comments.
- E. The time period for public comment regarding rules or guidelines on the Agenda will be announced by the Chairman at the beginning of the meeting. An extension to the time period for this public comment will be at the discretion of the Chair.
- F. A person who makes written comments to the Board shall include the following information:
 - 1. Name, address, telephone number of the person submitting the comments to the Board and the name of the person represented by the person submitting the written or oral comments.

2. If requesting the Board's review of an existing Rule or Guideline, the comments shall include the following:
 - a) Statement of the rulemaking action sought, including citation to the Rule or Guideline.
 - b) Statement on how each comment relates to the particular Rule or Guideline.
 - c) Reasons why the existing Rule or Guideline is inadequate, unreasonable, unduly burdensome or unlawful.
 - d) A list of other persons likely to be affected by the Rule or Guideline, with an explanation of the likely effects.
- G. The Board or the Board's authorized subcommittee will determine by majority vote whether the Rule or Guideline places an unnecessary burden on the ability of a Small Business to conduct their affairs. If the Board is unable to make a determination based on the information that is presented, they may require that the state agency provide them with information that will allow the Board to make such a determination. All requests for information will be sent to the Agency's Secretary. Copies of the request will be sent to the Agency Executive Assistant, the Division Administrator, the Small Business Regulatory Coordinator and the Small Business Review Board member.
- H. When the Board or a Board's authorized subcommittee determines that a rule or guideline places an unnecessary burden on small business(es) it shall issue a report and recommendation regarding the rule or guideline to be sent to the Joint Committee for Review of Administrative Rules. A copy of this report will be provided to the Agency's Secretary, Executive Assistant, and Small Business Regulatory Coordinator, Small Business(es) submitting the request, business associations, trade groups or any business affiliations that have an interest in the rule or persons who specifically make such a request to the Board.
- I. Recommendations submitted in the Report to the Joint Committee for Review of Administrative Rules may include, but shall not be limited to, the following:
 1. Compliance with the statutory requirements.
 2. The continued need for the Rule or Guideline.
 3. Agency enforcement policy, including whether the rule is currently being enforced, and if so, whether there are any problems with enforcement.

4. The nature of the complaints and comments received from the public regarding the rule or guideline.
5. The complexity, clarity, conciseness and/or understandability of the Rule or Guideline.
6. The extent to which the Rule or Guideline overlaps, duplicates or conflicts with federal regulations, other state Rules or local ordinances.
7. The length of time since the Rule or Guideline has been evaluated.
8. The degree to which technology, economic conditions or other factors have changed in the subject area affected by the rule or guideline since the Rule or Guideline was promulgated.

X. Board Website

The Ombudsman will post and maintain the following information on the Board's website:

1. A listing of the Board members and board staff.
2. Meeting Dates, Agendas and Meeting Minutes
3. Board Operating Rules
4. Board Reports to Joint Committee on Administrative Rules
5. Frequently Asked Questions
6. Small Business Feedback Form
7. Board Forms
8. Success Stories
9. Wisconsin Administrative Rule Web Site

Appendix Doc #1

**Transmittal to
Small Business Regulatory Review Board
Of Proposed Administrative Rule
Wis. Stat. 227.14(2g)**

Subject:

Statutory Authority (including citation authorizing new or increased fees):

Small Business Impact Certification Statement:

Analysis per Wis. Stats., 227.114(2) & (3) and 227.14(2):

Forms, Definitions and Acronyms: (include or list where they can be found)

Agency's Small Business Outreach (227.114(4):

Comments Received on Rule (include where they can be found):

Names and Phone Numbers of Agency Contacts:

Authorized Agency Signature/Telephone No.	Date

Appendix Doc. #2

**Transmittal of Emergency Administrative Rule
To the Small Business Regulatory Review Board
Wis. Stat. 227.24(3m)**

Subject:

Statutory Authority (including citation authorizing new or increased fees):

Analysis per Wis. Stats., 227.114(2) & (3) and 227.14(2m):

Forms, Definitions and Acroynms: (include or list where they can be found)

Agency Small Business Outreach (Wis. Stats. 227.114(4):

Explanation on how Agency Responded to Comments Received (Wis. Stat. 227.24(3m)

Names and Phone Numbers of Agency Contacts:

Authorized Agency Signature/Telephone No.	Date

Small Business Regulatory Review Board
Instrument for Evaluation of Proposed Administrative Rules
Review of the Initial Regulatory Flexibility Analysis

Adm. Rule CR- _____

Submitted by: _____

Date: _____

Relating to: _____

REVIEW CRITERIA

A. Threshold Analysis – In determining small business impact, did the agency perform a proper threshold analysis that discussed the following:

1.	Did the agency describe the small business entities that are affected by the rule?
2.	Was a brief economic and technical statement on the regulated community, describing some of the following types of information provided, for example: <ul style="list-style-type: none">• The diversity in size of regulated entities?• Revenues in each size grouping?• Profitability in each size grouping?
3.	Was a fair, first estimate of expected cost impacts done on the affected entities?
4.	Was appropriate criteria used to examine whether first-estimate costs are significant or insignificant?
5.	Was appropriate criteria used to examine whether entities constituted a substantial number of entities that will be affected?
6.	Did the agency make a reasonable effort to acquire quantitative or other information to support the threshold analysis?

Additional Comments:

Small Business Regulatory Review Board

Instrument for Evaluation of Administrative Rules

Review of the Initial Regulatory Flexibility Analysis

Adm. Rule CR-_____

Relating to:

REVIEW CRITERIA

B. Business Climate

1. Does this action result in increase cost to business, or increased reporting to government or supervision by government?
2. Are there benefits to business?
3. Are there benefits to the public?
4. Do the benefits to the public outweigh the costs to business?
5. Does the proposed action distinguish between requirements pertaining to small business and large business?

C. Methods for Reducing the Impact of the Rule on Small Business – Would the impact on small businesses be reduced by:

1. The establishment of less stringent compliance or reporting requirements for small business?
2. The establishment of less stringent schedules or deadlines for compliance of reporting requirements for small businesses?
3. The consolidation or simplification of compliance or reporting requirements for small businesses?
4. The establishment of performance standards for small businesses to replace design or operational standards required in the rule?
5. The exemption of small businesses from any or all requirements of the rule.

Additional Comments:

--

Small Business Regulatory Review Board

Instrument for Evaluation of Administrative Rules

Review of the Final Regulatory Flexibility Analysis

Adm. Rule CR-_____

Relating to:

REVIEW CRITERIA

B. Methods for Reducing the Impact of the Rule on Small Business – Would the impact on small businesses be reduced by:

6.	The establishment of less stringent compliance or reporting requirements for small business?
7.	The establishment of less stringent schedules or deadlines for compliance of reporting requirements for small businesses?
8.	The consolidation or simplification of compliance or reporting requirements for small businesses?
9.	The establishment of performance standards for small businesses to replace design or operational standards required in the rule?
10.	The exemption of small businesses from any or all requirements of the rule.

Additional Comments

--

Appendix Doc. #5

In the Matter of

Review of Wis. Stats. _____

)
)
)
)
)

Rule CR: _____

**COMMENTS OF THE
SMALL BUSINESS REGULATORY REVIEW BOARD
ON THE NOTICE OF PROPOSED RULEMAKING
AND INITIAL REGULATORY FLEXIBILITY ANALYSIS**

Example Text:

The Small Business Regulatory Review Board submits these comment to
"Agency" regarding its *Notice of Proposed Rulemaking* in the above-captioned proceeding.

(SUMMARY OF PROPOSED RULE entered here.)

1. Small Business Regulatory Review Board's Background
Mission of the Board
Statutory Authority to Review for Compliance with the RFA (Wis. Stats. 15.155(5), 227.14(2g);
227.24(3m)) and 227.30
2. Compliance with RFA
3. (If applicable) Non-Compliance with RFA and Wis. Stat. 227.14 (2) (2m) or 227.114(2) and (3)
4. Recommendations of the Board to Minimize the Impact on Small Business

Respectfully submitted,

(signature of Board Chairman)

cc: Jt. Council

Agency Secretary
Division Administrator of Rule-Writing Bureau
Agency Executive Assistant
Affected Association
Small Business Regulatory Coordinator of Agency

